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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,629	03/23/2004	David A. Goldman	20060/10001A	2629
34431	7590	02/03/2005	EXAMINER	
HANLEY, FLIGHT & ZIMMERMAN, LLC 20 N. WACKER DRIVE SUITE 4220 CHICAGO, IL 60606			KAUFFMAN, BRIAN K	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,629	GOLDMAN, DAVID A.	
	Examiner	Art Unit	
	Brian K Kauffman	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 March 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,5-15,17-27 and 29-35 is/are rejected.

7) Claim(s) 4,16 and 28 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/15/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Objections

Claim 7 is objected to because of the following informalities: on line 4, the word "ones" should be replaced with the word "one." Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-6, 9-15, 17-18, 21-27, 29-30, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Futamura et al. (5,563,795).

In regard to claims 1-3, 5-6, and 9-12, Futamura et al. discloses a method of generating embroidery data from image data including a plurality of portions, comprising: segmenting the image data into a plurality of object areas; assigning each portion of the image data to only one of the plurality of object areas to form segmented image data; and generating the embroidery data from the segmented data (col. 4, lines 26-36).

In regard to claims 13-15, 17-18, and 21-24, Futamura et al. discloses a system for generating embroidery data from image data including a plurality of portions, comprising: a memory (3) and a processor (2) coupled to the memory and programmed to: segment the image data into a plurality of object areas; assign each portion of the

image data to only one of the plurality of object areas to form segmented image data; and generate the embroidery data from the segmented image data (col. 4, lines 26-36).

In regard to claims 25-27, 29-30, and 33-35, Futamura et al. discloses a machine readable medium (3) having instructions stored thereon that, when executed, cause a machine to: segment image data including a plurality of portions into a plurality of object areas; assign each portion of the image data to only one of the plurality of object areas to form segmented image data; and generate the embroidery data from the segmented image data (col. 4, lines 26-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7-8, 19-20, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Futamura et al. (5,563,795) in view of Nakamura et al. (5,422,819). Futamura et al. does not disclose removing at least one of the plurality of object areas

having a spatial area smaller than a predetermined value and assigning one of the plurality of portions making up the at least one removed object areas to at least one adjacent remaining area. Futamura et al. also does not disclose smoothing portions of the image data having a contrast below a predetermined threshold. Nakamura et al. does disclose removing at least one of the plurality of object areas having a spatial area smaller than a predetermined value and assigning one of the plurality of portions making up the at least one removed object areas to at least one adjacent remaining area as well as smoothing portions of the image data having a contrast below a predetermined threshold (col. 6, lines 39-57, col. 8, lines 63-68, and col. 9, lines 1-4). The process removes noise from the original image (col. 5, lines 16-20). It would have been obvious to one having ordinary skill at the time the invention was made to modify Futamura et al's apparatus by removing at least one of the plurality of object areas having a spatial area smaller than a predetermined value and assigning one of the plurality of portions making up the at least one removed object areas to at least one adjacent remaining area as well as smoothing portions of the image data having a contrast below a predetermined threshold as taught by Nakamura et al. in order to remove noise from the original image.

Allowable Subject Matter

Claims 4, 16, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

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Claims 4, 16, and 28 are allowed because they specifically require selecting one of a plurality of stitch angles to minimize a number of fragments associated with the plurality of fragments.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K Kauffman whose telephone number is (571)272-4988. The examiner can normally be reached on M-F every week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571)272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Peter Nerbun
Primary Examiner